

MASTER POWER PURCHASE AND SALE AGREEMENT

This *Master Power Purchase and Sale Agreement (Version 2.1, modified April 25, 2000)* ("Master Agreement") is made as of the following date: December 20, 2002 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name ("Wheelabrator Shasta Energy Company Inc." or "Party A")

Name: **State of California Department of Water Resources** separate and apart from its powers and responsibilities with respect to the State Water Resources Development System ("California Department of Water Resources" or "Party B")

All Notices:

All Notices: DWR/CERS

Attn: Executive Manager Power Systems

Street: _____

Street: 3310 El Camino Avenue, Suite 120

City: _____ Zip: _____

City/State: Sacramento, California 95821

Attn: Contract Administration

Attn: Executive Manager Power Systems

Phone: _____

Phone: (916) 574-0339

Facsimile: _____

Facsimile: (916) 574-2512

Duns: _____

Duns:

Federal Tax ID Number: _____

Federal Tax ID Number:

Invoices:

Invoices:

Attn: _____

Attn: Settlements Unit; Doreen Singh

Phone: _____

Phone: (916) 574-0309

Facsimile: _____

Facsimile: (916) 574-1239

Scheduling:

Scheduling:

Attn: _____

Attn: Power Dispatcher

Phone: _____

Phone: 916-574-0161

Facsimile: _____

Facsimile: (916) 574-2569

Payments:

Payments:

Attn: _____

Attn: Cash Receipts Section

Phone: _____

Phone: (916) 653-6892

Facsimile: _____

Facsimile: (916) 654-9882

Wire Transfer:

Wire Transfer:

BNK: _____

BNK:

ABA: _____

ABA:

ACCT: _____

ACCT:

Credit and Collections:

Credit and Collections:

Attn: _____

Attn: Credit Manager

Phone: _____

Phone: (916) 574-1297

Facsimile: _____

Facsimile: (916) 574-2512

With additional Notices of an Event of Default or Potential Event of Default to:

With additional Notices of an Event of Default or Potential Event of Default to:

Attn: _____

Attn: Financial Officer

Phone: _____

Phone: (916) 574-1297

Facsimile: _____

Facsimile: (916) 574-2512

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff _____ Dated _____ Docket Number _____

Party B Tariff Tariff _____ Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions ☐ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive ☐ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

☐ Cross Default for Party A: Not Applicable

☐ Party A: Cross Default Amount \$ _____

☐ Other Entity: _____ Cross Default Amount \$ _____

☐ Cross Default for Party B: Not Applicable

☐ Party B: Cross Default Amount \$ _____

☐ Other Entity: _____ Cross Default Amount \$ _____

5.6 Closeout Setoff

☐ Option A (Applicable if no other selection is made.)

☐ Option B- Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows:

☒ Option C (No Setoff)

Article 8

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

☐ Option A

☐ Option B Specify: _____

☒ Option C Specify: Annual audit, annual budget and all financial information sent to any seller under a power purchase agreement; Party B shall use reasonable commercial efforts to periodically prepare and make available to all sellers under power sales agreements, but not more frequently than quarterly, financial information reasonably intended to apprise all such sellers of the financial condition of the Fund.

(b) Credit Assurances:

☒ Not Applicable

☐ Applicable

(c) Collateral Threshold:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

Party B Collateral Threshold: \$_____ provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party B Independent Amount: \$ -0-

Party B Rounding Amount: \$ -0-

(d) Downgrade Event:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

Other:

Specify: _____

(e) Guarantor for Party B: Not Applicable

Guarantee Amount: _____

8.2 Party B Credit Protection:

Unrated counterparties will be required to (a) post collateral upon the occurrence of a Material Adverse Change (definition to be provided), or (b) provide a guarantee from an entity with a minimum S&P and Moody's ratings to be specified by DWR.

(a) Financial Information:

- ☒ Option A
☐ Option B Specify: _____
☐ Option C Specify: _____

(b) Credit Assurances:

- ☒ Not Applicable
☐ Applicable

(c) Collateral Threshold:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$ _____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

Party A Independent Amount: \$ -0-

Party A Rounding Amount: \$-0-

(d) Downgrade Event:

- ☒ Not Applicable
- ☐ Applicable

If applicable, complete the following:

- ☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's
- ☐ Other:
Specify: _____

(e) Guarantor for Party A: Not Applicable

Guarantee Amount: _____

Article 10

Confidentiality

- ☐ Confidentiality Applicable ☐ If not checked, inapplicable.

Schedule M

- ☐ Party A is a Governmental Entity or Public Power System
☒ Party B is a Governmental Entity or Public Power System
☐ Add Section 3.6 If not checked, inapplicable
☐ Add Section 8.4 [8.6] If not checked, inapplicable

Other Changes: Applicable

Specify, if any: See below

Part 1. GENERAL TERMS AND CONDITIONS.

(a) Definitions.

(1) Section 1.11 is amended by adding the following sentence at the end of the current definition: "The Non-Defaulting Party shall use commercially reasonable efforts to mitigate or eliminate these Costs."

(2) Section 1.51, "Replacement Price" shall be amended on the fifth line by deleting the phrase "at Buyer's option" and inserting the following phrase: "absent a purchase".

(3) Section 1.53, "Sales Price" shall be amended on the fifth line by deleting the phrase "at Seller's option" and inserting the following phrase: "absent a sale".

(4) Section 1.46 "Potential Event of Default" is deleted.

(5) Sections 1.6, 1.24, 1.28, 1.33, 1.34, 1.35, 1.36, 1.43, 1.44, 1.48 and 1.56 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]"

(6) Section 1.59 is amended by changing "Section 5.3" to "Section 5.2."

(7) Sections 1.62 through 1.70 are added to Article One as follows:

- 1.62 "Bonds" shall have the meaning set forth in the Rate Agreement.
- 1.63 "Fund" means the Department of Water Resources Electric Power Fund established by Section 80200 of the Water Code.
- 1.64 "Market Quotation Average Price" shall mean the average of the good faith quotations solicited from not less than three (3) Reference Market-makers; provided, however, that the Party soliciting such quotations shall use commercially reasonable efforts to obtain good faith quotations from at least five (5) Reference Market-makers and, if at least five (5) such quotations are obtained, the Market Quotation Average Price shall be determined disregarding the highest and lowest quotations.
- 1.65 "Market Value" shall have the meaning set forth in Section 5.3.
- 1.66 "Per Unit Market Price" means the applicable price per MWh determined in accordance with Section 5.3.
- 1.67 "Power Charges" shall have the meaning set forth in the Rate Agreement.
- 1.68 "Rate Agreement" means the Rate Agreement between Party B and State of California Public Utilities Commission ("CPUC") adopted by the CPUC on February 21, 2001 in Decision 02-02-051.
- 1.69 "Reference Market-maker" means any marketer, trader or seller of or dealer in firm energy products whose long-term unsecured senior debt is rated BBB or better by S&P, or its successor, and Baa2 or better by Moody's, or its successor.
- 1.70 "Replacement Contract" means a contract having a term, quantity, delivery rate, delivery point and product substantially similar to the remaining Term, quantity, delivery rate, Delivery Point and Product to be provided under this Agreement.

(b) Transactions. The Transaction shall be in writing and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5.

(c) Governing Terms. Section 2.2 is amended by adding the following sentence at the end of the current section:

"Notwithstanding the foregoing, each Transaction shall be treated as a stand-alone Transaction and accordingly (a) provisions in the Master Agreement referring to offsetting or netting multiple Transactions shall not be applicable, (b) an Event of Default or Potential Event of Default with respect to a Transaction shall not independently constitute an Event of Default or Potential Event of Default under any other Transaction, and (c) any event permitting suspension of performance with respect to a Transaction shall not permit suspension of performance under any other Transaction. No provision of any Confirmation entered into pursuant to Section 2.4 with respect to a Transaction shall affect any other Transaction."

(d) Events of Default. (1) Sections 5.1(c) is amended by deleting the text in such subsection and substituting therefor the following:

- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within three (3) Business Days after written notice;

(2) Section 5.1 shall be amended by adding the following after Section 5.1(h):

"(h) It shall be an Event of Default if (a) Party A shall use the CAISO uninstructed imbalance markets to effect delivery under any Transaction except (i) in the case where the unit providing the Product trips off line after the close of the CAISO hour-ahead scheduling window for such hour and Party A submits a schedule change as soon as possible upon the occurrence of any under-deliveries, or (ii) such use is the result of a CAISO direction], or (b) intentional conduct of Party A, or a decision of Party A for economic reasons, results in the failure to schedule or the non-delivery of energy or the non-availability of capacity, unless the Party A is required to make a third party sale pursuant to applicable law, regulation, order or decree of any state or federal governmental authority. Part A shall provide Party B with such information and data as Party B may reasonably request to verify compliance with this Section 5.1(h)"

(e) Declaration of an Early Termination Date and Calculation of Termination Payment

(1) Section 5.2 is replaced in its entirety by the following: "(a) If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall be entitled to a payment upon termination of this Agreement as the result of an Event of Default (the "Termination Payment") which shall be the aggregate of the Market Value and Costs calculated in accordance with Section 5.3 which shall be paid no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date. Prior to receipt of such notice of termination by the Defaulting Party, the Non-Defaulting Party may exercise any remedies available to it at law or otherwise, including, but not limited to, the right to seek injunctive relief to prevent irreparable injury to the Non-Defaulting Party.

(b) Notwithstanding the other provisions of this Agreement, if the Non-Defaulting Party has the right to liquidate or terminate all obligations arising under this Agreement under the provisions of this Article 5 because the Defaulting Party either (a) is the subject of a bankruptcy, insolvency, or similar proceeding, or (b) applies for, seeks, consents to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets, then this Agreement and the Transaction shall automatically terminate, without notice, as if the Early Termination Date was the day immediately preceding the events listed in Section 5.1.

(2) Section 5.3 is replaced in its entirety by the following:

"5.3. Termination Payment Calculations. The Non-Defaulting Party shall calculate the Termination Payment as follows:

- (a) Market Value shall be (i) in the case Party B is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under a Replacement Contract based on the Per Unit Market Price, and (B) payments under this Agreement, or (ii) in the case Party A is the Non-Defaulting Party, the present value of the positive difference, if any, of (A) payments under this Agreement, and (B) payments under a Replacement Contract based on the Per Unit Market Price, in each case using the Present Value Rate as of the time of termination (to take account of the period between the time notice of termination was effective and when such amount would have otherwise been due pursuant to the relevant transaction). The "Present Value Rate" shall mean the sum of 0.50% plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that matches the average remaining term of this Agreement. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into a Replacement Contract in order to determine the Termination Payment.

- (b) To ascertain the Per Unit Market Price of a Replacement Contract with a term of less than one year, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts, the settlement prices on established, actively traded power exchanges, other bona fide third party offers and other commercially reasonable market information.
- (c) To ascertain the Per Unit Market Price of a Replacement Contract with a term of one year or more, the Non-Defaulting Party shall use the Market Quotation Average Price; provided, however, that if there is an actively traded market for such Replacement Contract or if the Non-Defaulting Party is unable to obtain reliable quotations from at least three (3) Reference Market-makers, the Non-Defaulting Party shall use the methodology set forth in paragraph (b).
- (d) In no event, however, shall a party's Market Value or Costs include any penalties, ratcheted demand charges or similar charges imposed by the Non-Defaulting Party.

If the Defaulting Party disagrees with the calculation of the Termination Payment and the parties cannot otherwise resolve their differences, pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party no later than one hundred eighty (180) days after receipt of written notice of an Early Termination Date."

(4) 5.4, 5.5, 5.6, 6.7 and 6.8 are amended by deleting the text in each of such sections and substituting therefor "[Intentionally omitted.]"

(f) Term of Master Agreement. (a) The first sentence of Section 10.1 shall be amended by deleting the phrase "terminated by either Party upon (thirty) 30 days prior written notice" and in its place the phrase "the day following the last day of the Term or Delivery Period set forth in a Transaction, unless terminated sooner pursuant to the express provisions of this Agreement or as a result of an Event of Default".

(b) The following sentence shall be added to Section 10.1:

"This Agreement shall immediately terminate on the earlier of (a) Business Day following the day that the long-term unsecured senior debt of Pacific Gas and Electric Company is rated BBB- or better by S&P and Baa3 or better by Moody's, and (b) the first anniversary of the execution of the Agreement."

(g) Representations and Warranties. The following changes shall be made to the Section 10.2:

(1) Party B shall not be deemed to make the representations set forth in clauses (ix) and (xi) of Section 10.2.

(h) Indemnity. The phrase "To the extent permitted by law" is added at the beginning of the first two sentences of Section 10.4.

(i) Governing Law. In Section 10.6, "New York" shall be replaced with "California."

(j) General. The phrase "Except to the extent herein provided for," shall be deleted from the fourth sentence of Section 10.8, and the phrase "and this agreement may not be orally amended or modified, including by Recording pursuant to Section 2.5" shall be added to the end of such fourth sentence.

(k) Additional Provisions. New Section 10.12 shall be added to Article 10 as follows:

"10.12 No Agency. In performing their respective obligations hereunder, neither Party is acting, or is authorized to act, as agent of the other Party."

(l) Schedule M. Schedule M shall be amended as follows:

- (1) In Section A, "Act" will mean Sections 80000, 80002, 80002.5, 80003, 80004, 80010, 80012, 80014, 80016, 80100, 80102, 80104, 80106, 80108, 80110, 80112, 80116, 80120, 80122,

80130, 80132, 80134, 80200, 80250, 80260 and 80270 of the Water Code, as amended.

- (2) "Special Fund" will mean the Fund.
- (3) In Section A, the defined term "Governmental Entity or Public Power System" shall be replaced with the term "Governmental Entity" using the following definition "Governmental Entity" means the State of California Department of Water Resources separate and apart from its powers and responsibilities with respect to the State Water Resources Development System"; and all references to (A) "Governmental Entity or Public Power System" (and cognates) and (B) "Public Power System" (and cognates) in Schedule M shall be replaced with the new defined term "Governmental Entity" (using the applicable cognate).
- (4) Section C is amended by deleting the text in such section and substituting therefor "[Intentionally omitted.]"
- (5) In Section D, delete Sections 3.4 and 3.5 and replace it with the following:

"3.4 "[Intentionally omitted.]"

"3.5 No Immunity Claim. California law authorizes suits based on contract against the State or its agencies, and Party B agrees that it will not assert any immunity it may have as a state agency against such lawsuits filed in state court."

- (6) In Section G, specify that the laws of the State of California will apply.

- (7) Add a new Section H, which shall read as follows:

"3.7. Rate Covenant; No Impairment. In accordance with Section 80134 of the Water Code, Party B covenants that it will, at least annually, and more frequently as required, establish and revise revenue requirements sufficient, together with any moneys on deposit in the Fund, to provide for the timely payment of all obligations which it has incurred, including any payments required to be made by Party B pursuant to this Agreement. As provided in Section 80200 of the Water Code, while any obligations of Party B pursuant to this Agreement remain outstanding and not fully performed or discharged, the rights, powers, duties and existence of Party B and the Public Utilities Commission shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the Seller under this Agreement."

- (8) Add a new Section I, which shall read as follows:

"3.8. Sources of Payment; No Debt of State. Party B's obligation to make payments hereunder shall be limited solely to the Fund and shall be payable as an operating expense of the Fund solely from Power Charges subject and subordinate to each Priority Long Term Power Contract in accordance with the priorities and limitations established with respect to the Fund's operating expenses in any indenture providing for the issuance of Bonds and in the Rate Agreement and in the Priority Long Term Contracts. Any liability of Party B arising in connection with this Agreement or any claim based thereon or with respect thereto, including, but not limited to, any Termination Payment arising as the result of any breach or Potential Event of Default or Event of Default under this Agreement, and any other payment obligation or liability of or judgment against Party B hereunder, shall be satisfied solely from the Fund. NEITHER THE FULL FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF CALIFORNIA ARE OR MAY BE PLEDGED FOR ANY PAYMENT UNDER THIS AGREEMENT. Revenues and assets of the State Water Resources Development System, and Bond Charges under the Rate Agreement, shall not be liable for or available to make any payments or satisfy any obligation arising under this Agreement."

- (9) Add a new Section J, which shall read as follows:

"3.9. Application of Government Code and the Public Contracts Code. Party A has stated that, because of the administrative burden and delays associated with such requirements, it would not enter into this Agreement if the provisions of the Government Code and the Public Contracts Code applicable to state contracts, including, but not limited to, advertising and competitive bidding requirements and prompt payment requirements would apply to or be required to be incorporated in this Agreement. Accordingly, pursuant to Section 80014(b) of the Water Code, Party B has determined that it would be detrimental to accomplishing the purposes of Division 27 (commencing with Section 80000) of the Water Code to make such provisions applicable to this Agreement and that the provisions of the Government Code and the Public Contracts Code applicable to state contracts are therefore not applicable to or incorporated in this Agreement."

(10) Add a new Section K, which shall read as follows:

"3.10. Termination Without Recourse. In addition to any other termination rights herein, a Party shall have the right, but not the obligation, to terminate the Agreement without recourse against the other Party for any Termination Payment or other costs and without any further obligation or liability of either Party, as follows:

(i) Party A may terminate if Party B fails to maintain an underlying rating on the Bonds (without regard to credit enhancement) of Baa3 or better by Moody's or BBB- or better by S&P and such failure continues for 30 or more consecutive days,

(ii) a Party not claiming the Force Majeure event may terminate if a Force Majeure event continues uninterrupted for more than 180 days. Party A shall not be entitled to receive capacity payments during a Party A declared Force Majeure event.

(11) Add a new Section L, which shall read as follows

"Section 3.11. Party B's Right to Terminate without Recourse for Challenge to Revenue Requirement. Party A acknowledges that Party B's ability to perform under this Agreement is subject to Party B deriving revenue attributable to each revenue requirement. Accordingly, in addition to any other termination rights herein, and notwithstanding any other provision of this Agreement to the contrary, Party B shall have the right, but not the obligation, in its sole discretion, to terminate this Agreement at any time without recourse against Party B for any Termination Payment or other costs and without any further obligation or liability of either Party, if Pacific Gas and Electric Company or any Affiliate initiates any administrative or judicial action or proceeding, or prosecutes or fails to withdraw from or dismiss any existing or pending action or proceeding, which Party B determines, in its sole discretion, could result in any reduction in amounts derived by Party B under any revenue requirement. Party A acknowledges that a judicial proceeding has been filed by Pacific Gas and Electric Company with respect to Party B's current revenue requirement and that the execution of this Agreement by Party B does not constitute a waiver of the provisions of this Section 3.11 with respect to that proceeding and that unless and until such proceeding is withdrawn Party B may exercise its rights hereunder at any time."

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

Party A – WHEELABRATOR SHASTA ENERGY COMPANY INC.	Party B – DEPARTMENT OF WATER RESOURCES with respect to the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System
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By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

December 20, 2002

Confirmation Letter – Unit-Firm Renewable Product

When fully executed, this letter confirms the agreement by Wheelabrator Shasta Energy Company Inc. (“Seller”), to provide to the California Department of Water Resources with respect to the Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System (“DWR”), the “Buyer,” the right to dispatch the unit identified below for all electrical products as specified herein. Pacific Gas and Electric Company (“PG&E”) has also entered into an EEI Master Power Purchase and Sale Agreement and confirmation (the “PG&E Agreement”) with respect to the right to dispatch such unit for all such electrical products.

1. Seller: Wheelabrator Shasta Energy Company Inc.
2. Buyer: DWR. On the next following Business Day after the date on which PG&E receives a credit rating of at least BBB- or better by S&P and Baa3 or better by Moody's, the DWR Agreement shall terminate and be superseded automatically by the PG&E Agreement, PG&E shall automatically supersede DWR as the Buyer under the PG&E Agreement and DWR shall be relieved of all future liability with respect to the transactions set forth in this Agreement and in the PG&E Agreement.
3. Unit:
 - a. Seller shall supply all electrical products under this Confirmation from the following resource(s): Wheelabrator Shasta Unit (T/G) No. 4 [CaISO Resource I.D.: WSENGY_1_UNIT 4] (“Unit(s)”). To the extent the Products will be delivered from more than one Unit, all output from such Units must be delivered through a single meter and that meter must be dedicated exclusively to those units described herein. This/these Unit(s) employ(s) the following renewable technology/ies: biomass. To be eligible, a Unit(s) must qualify as an “Eligible renewable energy resource” as defined in the new Section 399.12, added to the California Public Utilities Code by SB 1078. All environmental attributes associated with generation from the Unit(s) must be provided for an offer to be accepted and shall be conveyed to Buyer as included in the delivery of the Product.
 - b. Environmental Attributes shall have the meaning set forth in Attachment A “Environmental Attributes,” attached hereto and incorporated herein by this reference. Seller represents that Seller holds the rights to all Environmental Attributes associated with the Unit(s), and Seller agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Product from the Unit(s).
4. Product: Full Unit Output. Seller’s hourly load profile is 3.0 MW for all hours during the term of this agreement, except as excused for Planned Outage Allowance or per the Unplanned Outage Allowance. Seller to provide all energy from unit to the extent necessary to meet the hourly profile.

5. Quantity:

- a. Maximum Capacity: 3.0 MW [must be no less than 3 MW]. Buyer shall have the exclusive right to use all or any portion of the amount of the Maximum Capacity, including green attribute or rights, for all services listed in part b, below, and for daily/hourly changes. The Maximum Capacity shall be no less than maximum unit output, less station use.
- b. Seller can specify below additional dispatchability and/or ancillary services it wishes to offer in addition to the hourly profile indicated above. [Seller must list these services here, along with the amounts for each service]: No additional dispatchability or ancillary services offered.
- c. The parties shall follow an "Operating Procedures Agreement," which must be executed by Seller before the commencement of service hereunder and a copy of which shall be provided to Seller by Buyer or PG&E as agent of the Buyer within 10 days after its selection as a winning bidder.
- d. Testing: (A) The audit rights under Section 10.9 of the Master Agreement shall include such inspections and testing of meters as is reasonably necessary to confirm their accuracy consistent with current ISO practices and procedures or any successor tariff requirements. The Party requesting any such inspections and testing shall bear the cost of the foregoing in the event the meters are accurate within applicable ISO or successor metering requirements. The other Party shall bear these costs if the meters are not accurate within applicable ISO or successor metering requirements. (B) In addition, such audit rights shall include inspections and testing as is reasonably necessary to confirm the accuracy of any notice delivered by Seller to Buyer respecting the availability or operation of the Unit(s) within the parameters set forth in Section 4. If Buyer requests that a Unit be tested, Seller shall have the right to a prompt retest of such Unit. Seller shall also have the right to request a test of a Unit at any time, and Buyer shall have the right to a prompt retest of such Unit. The Party requesting that a Unit be tested shall bear the costs of such test. (C) Seller hereby consents to Buyer obtaining from the ISO the ISO meter data applicable to the Unit(s).
- e. Planned Outage Allowance: 21 days per calendar year, which Seller shall schedule in writing with Buyer or PG&E as agent of the Buyer as set forth in the Operating Procedures Agreement for the next following calendar year on or before December 1 [specified months shall exclude January, June through October, and December]. For the purposes of this Agreement, "Planned Outage" means removing the equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance must actually be conducted during the Planned Outage, and must be of the type that is both necessary to reliably maintain the Unit(s) and cannot be prudently conducted during Unit operations.
- f. Unplanned Outage Allowance: 1200 hours per year; provided that, no more than 4% of the Unplanned Outage Allowance may be used in any month during the

period from June through October. The Unplanned Outage Allowance may be used for either Forced Outages or Maintenance Outages. Seller shall notify Buyer or PG&E as agent of the Buyer of any forced outage within 10 minutes, and shall provide an estimate of its expected duration of the outage within 1 hour thereafter. Within these limits, a Forced Outage shall excuse Seller's obligation to deliver electrical products. For any unexcused outage that lasts longer than 1 hour, Buyer shall pay no capacity payment for the period of the outage, and a Unit(s) shall be deemed to be scheduled by Buyer each hour for purposes of adjusting payments due under the Confirmation. For purposes of this agreement, the term "Forced Outage" shall mean an unplanned reduction or suspension of the electrical output from the Unit(s) in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction; provided that, a Forced Outage shall not be excused if it resulted from the negligence of Seller or the operator of the Unit(s). Outages that both (i) meet this definition of Forced Outage and (ii) do not exceed the allowable limits set forth herein shall be excused. Forced Outage shall not include any outage that results from a loss of electric or gas transmission service. For the purposes of this Agreement, the term "Maintenance Outage" means the removal of equipment from service availability to perform work on specific components that can be deferred beyond the end of the next weekend, but requires the equipment be removed from service before the next Planned Outage. Seller shall provide advance written notice of any Maintenance Outage to Buyer or PG&E as agent of the Buyer as set forth in the Operating Procedures Agreement for the outage to qualify as a Maintenance Outage. Within these limits, a Maintenance Outage shall excuse Seller's obligation to deliver electrical products. Under no circumstances may Seller substitute market power for the output of the Unit(s) during an Unplanned Outage.

- g. Prolonged Outage: In the event of a "Prolonged Outage," Buyer shall have no obligation to make capacity payments hereunder for the period of the outage, that is, until the Unit(s) is again able to provide the hourly profile on a reliable basis. For purposes of this agreement, a "Prolonged Outage" is any period of more than 30 consecutive days during which the Unit(s) is or will be unable, for whatever reason, to provide at least 60% of the hourly profile as scheduled by Buyer. Seller must notify Buyer or PG&E as agent of the Buyer of the outage as soon as possible under the circumstances, in writing, and, for the duration of the outage, Buyer need not schedule from the Unit(s). Seller must notify Buyer or PG&E as agent of the Buyer when the Unit(s) is again capable of providing the hourly profile and, upon Buyer's or its agent's receipt of such notice, Buyer shall resume capacity payments and scheduling. Any outage that prevents the Unit(s) from delivering at least 60% of the hourly profile for a period of six (6) consecutive months shall, at Buyer's election, constitute an Event of Default; provided that, an outage resulting from an event of Force Majeure that prevents the Unit(s) from delivering at least 60% of the hourly profile for a period of twelve (12) consecutive months shall constitute an Event of Default. Under no circumstances

may Seller substitute market power for the output of the Unit(s) during a Prolonged Outage.

- h. Duty of Care: Seller agrees (1) to use the best industry practices in the maintenance and operation of the Unit(s), so that there is not a material change in the operating characteristics of the Unit(s) over the term of this agreement and (2) to use all commercially reasonable efforts to obtain and maintain all regulatory approvals needed to operate and maintain the Unit(s)s, so that there is no delay in the commencement of service hereunder and no break in service attributable to regulatory action.
- 6. Delivery Point: (a) Unit's bus bar, if unit(s) is located in California Independent System Operator ("CAISO") zone North of Path 15 as currently defined ("NP15"), or (b) an agreed-upon bus bar in NP15 if unit(s) located outside the CAISO NP15 zone and Seller has firm transmission rights to the specified bus bar for the full term of this agreement, or (c) any other point subject to Buyer's agreement.
- 7. Term: from the date of the execution of this Confirmation to the earlier of (a) Business Day following the day that the long-term unsecured senior debt of PG &E is rated BBB- or better by S&P and Baa3 or better by Moody's, and (b) the first anniversary of the execution of this Confirmation.
- 8. Capacity Price: Buyer shall pay Seller a capacity payment of \$30.00/kw-year, allocated in accordance with the monthly Capacity Payment Schedule attached hereto.
- 9. Energy Price: Energy shall be measured in MWh at the California Independent System Operator ("ISO") (or its successor) revenue meter for the Unit(s) to determine the amount of Energy delivered at the Delivery Point, which amount shall then be multiplied by the applicable generation meter multiplier (or any successor method to account for losses established by the ISO) for each Unit, to determine the amount of Energy delivered at the Delivery Point. Buyer shall pay for only the net amount delivered after station use needs are subtracted. Buyer will pay Seller for each MWh delivered by Seller from the Unit and received by Buyer at a rate in \$/MWh in the attached Energy Price Schedule for Proposal No. 1.
- 10. Buyer will pay N/A \$/start-up for each start required by Buyer's dispatch instructions.
- 11. Electric Dispatch: Buyer shall be the Scheduling Coordinator for the Unit(s). DWR shall have the right to designate PG&E as its scheduling agent until the transition to the Seller/PG&E Master Agreement is effective. If Buyer is experiencing an overgeneration condition (as defined by the ISO), Buyer may, without penalty hereunder and subject to the operating parameters of the unit, reduce the scheduled output from the Unit(s) and shall not be required to pay for the amount of energy not actually delivered as a result of this reduction. Buyer or PG&E as agent of the Buyer will notify Seller, conforming to NERC scheduling protocols, for any day-ahead electric dispatch if such product is offered. Buyer or PG&E as agent of the Buyer will also notify Seller, conforming to California ISO scheduling protocols, for any hour-ahead or real-time electric dispatch and changes if such product is offered. Seller shall notify Buyer or PG&E as agent of the Buyer of any instruction received from the ISO with respect to

RMR contracts and 'must offer' requirements. Any applicable RMR contract shall have precedence over scheduling under this agreement.

12. Schedule of Deliveries: Seller shall provide delivery schedules to Buyer or PG&E as agent of the Buyer consistent with the hourly profile no later than thirty-eight (38) hours prior to the beginning of each delivery day. Buyer may reduce the 38 hour period whenever it is practicable to do so. Each delivery schedule shall clearly identify, for each hour, Seller's best estimate of all amounts of energy to be delivered and sold to Buyer pursuant to this Agreement.
13. Transmission: The risk of transmission outages is allocated to each of the parties as follows: Seller is responsible for electric transmission to the Delivery Point and bears all risks and costs associated therewith; Buyer is responsible for electric transmission from the Delivery Point and bears all risks and costs associated therewith; the party providing fuel is responsible for gas transmission to the Unit(s) and bears all risks and costs associated therewith. The failure of gas or electric transmission service shall not be an excuse from performance hereunder.
14. Remedies:
 - a. If in any month Seller fails to provide the electrical services from the Unit(s) as dispatched by Buyer and such failure to deliver is not excused hereunder, then (i) no energy payment shall be due for the energy not actually delivered from the Unit(s), and (ii) the capacity payment for that month shall be reduced pro rata according to the total megawatt hours not provided from the Unit(s) as a ratio of the total megawatt hours dispatched by Buyer for that month, taking into consideration the outage allowances provided for in sections 5.e. and 5.f, and (iii) Seller shall reimburse Buyer, by set-off if Buyer so elects, for any energy imbalance costs and penalties incurred by Buyer for any hour during which Seller fails to deliver the full amount of energy scheduled by Buyer, excluding only hours during which the Unit(s) is unavailable because of an allowable outage, an RMR dispatch by the ISO, an Emergency dispatch by the ISO, or a Force Majeure condition; provided that, (A) the burden is the Seller's to demonstrate that one of these excuses applies to any particular instance of nonperformance by the Unit(s) and (B) the energy provided to the ISO by the Unit(s) shall be deemed delivered hereunder, and (C) any revenue received by Seller from the ISO for such dispatch shall be remitted to Buyer.
 - b. If Buyer fails to pay the undisputed amount of any invoice that is complete, properly formatted, and delivered to the correct address within the prescribed period, Seller may, without penalty, (i) suspend the provision of services under this Confirmation and (ii) the capacity payments under section 7 shall continue to accrue during the suspension period, and (iii) make sales to third parties from the Unit(s) until such payment, including applicable accrued interest, is received by Seller. Upon receipt by Seller of Buyer's payment, Buyer's rights hereunder shall be fully restored.
 - c. The remedies set forth here shall be the exclusive remedies (i) for Seller's failure to deliver electrical products as dispatched by Buyer and (ii) for late payment of

undisputed amounts by Buyer; provided that, the failure of either party to make required payments hereunder for a period of more than sixty (60) calendar days after an invoice for the underlying charges has been delivered to it shall constitute an Event of Default under the Master Agreement.

- d. The Unit(s) have not been designated as a Reliability Must Run resource by the CAISO for calendar year 2003.

15. Non-performance:

- a. In the event that the Unit(s) specified in Section 3 of this Confirmation is not commercially operable and delivering to Buyer by December 31, 2003, Buyer may at its sole discretion terminate this agreement and Seller shall pay Buyer damages in the form of \$15,000.00 (fifteen thousand dollars) times the MW specified under this agreement. Seller and Buyer agree that such damages are a reasonable approximation of the damages that Buyer will incur and shall be construed as liquidated damages and not as a penalty. Such liquidated damages shall apply solely to a termination of this agreement by Buyer for the reasons stated in this Section 15.
- b. Within thirty (30) days of acceptance of this Confirmation by Buyer, Seller shall provide to Buyer, as security for the payment of liquidated damages in accordance with paragraph 15. a above, a letter of credit or surety bond issued for the benefit of Buyer, in the form attached to PG&E's Request For Offers, or other security acceptable to Buyer.

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated December 20, 2002 (the "Master Agreement") between Seller and Buyer, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

BUYER

DEPARTMENT OF WATER RESOURCES
separate and apart from its powers and
responsibilities with respect to the State Water
Resources Development System

By: _____

Name: _____

Title: _____

Date: December 20, 2002

SELLER

By: _____

Name: George D. Woodward

Title: General Manager

Date: December 20, 2002

Attachment A
Environmental Attributes

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable from the facility. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such (subject to the foregoing) sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights such as Green Tag Reporting Rights to these avoided emissions. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with Federal or state law, if applicable, and to a Federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on kWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include any energy, capacity, reliability or other power attributes from the project nor production tax credits or certain other financial incentives existing now or in the future associated with the construction or operation of the energy projects.”

Capacity Payment Schedule

January.....	10.0%
February.....	2.8%
March.....	2.8%
April.....	2.8%
May.....	2.8%
June.....	12.0%
July	15.0%
August.....	15.0%
September	12.0%
October	12.0%
November	2.8%
December.....	10.0%

Wheelabrator Shasta Energy Company
 Proposal No. 1 for Unit (T/G) No. 4 in Response to 9/16/02 PG&E DWR UFRP RFO
 Energy Price Schedule

Time of Use Periods	Period A June 1 – September 30	Period B October 1 – May 31	Days Applicable
Peak Hours	11:00 AM – 7:00 PM	11:00 AM – 7:00 PM	Weekdays excluding NERC Holidays
Off-Peak Hours	All hours not included in peak hours	All hours not included in peak hours	All days not included in peak days

Energy Rates:			
Peak Hours – (\$/MWh)	\$80.00	\$50.00	Weekdays excluding NERC Holidays
Off-Peak Hours – (\$/MWh)	\$46.00	\$40.00	All days not included in peak days

Capacity Price:	Payment of \$30/kw-year
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